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for the Third Circuit

9-25-2002

Marcelus v. Jordan

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-1780

SAINT JEAN MARCELUS,
Appellant

v.

MARTHA JORDAN, Warden of Federal Detention Center, Oakdale, LA;
JANET RENO, Attorney General of the U.S.;
CAROL BELLEW, Officer-In-Charge of the INS's office in Cherry Hill, New Jersey;
NANCY HOOKS, Officer-In-Charge of the INS's office in Oakdale, Louisiana;
IMMIGRATION AND NATURALIZATION SERVICE

On Appeal from the United States District Court
for the District of New Jersey
D.C. Civil Action No. 01-cv-00071
(Honorable Joseph H. Rodriguez)

Argued July 11, 2002

Before: SCIRICA and GREENBERG, Circuit Judges,
and FULLAM, District Judge*

*The Honorable John P. Fullam, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

(Filed: September 25, 2002)

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OPINION OF THE COURT

SCIRICA, Circuit Judge.

The issue on appeal is whether we have jurisdiction to consider an appeal from a motion to transfer venue within the federal system. We will dismiss for lack of jurisdiction.

I.

Saint Jean Marcelus is a native and citizen of Haiti who entered the United States at Miami, Florida, on May 22, 1980 as a parolee. In January 1982, he became a lawful permanent resident of the United States. In 1984, Marcelus moved to New Jersey. On January 31, 1995, Marcelus was convicted of a third degree offense of "Endangering the Welfare of a Child" under New Jersey statutes section 2C: 24-4(a) and sentenced to a period of five years probation and eighteen months in an in-patient drug rehabilitation program.

On January 12, 2000, while still on probation, Marcelus was arrested. While in custody on January 12, the INS served Marcelus with a Notice to Appear, charging that he was removable under 237(a)(2)(A)(iii) of the Immigration and Nationality Act (INA), "in that, at any time after admission, you have been convicted of an aggravated felony as defined in section 101(a)(43) of the Act, a law relating to murder, rape, or sexual abuse of a child." Marcelus was transferred to the Federal Detention Center in Oakdale, Louisiana, where he remained until he was removed to Haiti on July 16, 2001.

On January 4, 2001, Marcelus submitted a Complaint for Declaratory and Injunctive Relief and a Petition for Writ of Habeas Corpus (with Emergency Stay of Deportation) in federal court (New Jersey). On January 19, 2001, the United States District Court for the District of New Jersey ordered the matter contained in the habeas petition transferred to the United States Court of Appeals for the Fifth Circuit. In the transfer order, the New Jersey District Court stated that "[a]s a 2241 Petition, this matter can only be entertained by the federal court in which Petitioner is incarcerated - the Western District of Louisiana." The order considered the jurisdiction of the transferee court and concluded that "in *Max-George* [*Max-George v. Reno*, 205 F.3d 194 (5th Cir. 2000)], vacated by *Max-George v. Ashcroft*, 533 U.S. 945 (June 29, 2001)], the Fifth Circuit held that, in matters of deportation following classification of a committed crime as an aggravated felony, the decision of the [BIA] is reviewable by the court of appeals."

On January 22, 2001, prior to receiving the transferred case, the Fifth Circuit denied Marcelus' December 18, 2000, emergency motion for stay of removal, and granted the government's motion to dismiss Marcelus' petition for review. On January 29, 2001, the Fifth Circuit received the case transferred from the New Jersey District Court.

Marcelus mailed a motion to reconsider the transfer order to the District Court in New Jersey. The District Court received the motion on February 5, 2001. The motion did not contain the certificate of service required by the Federal Rules of Civil Procedure and the court's local rules, so the District Court denied the motion without prejudice on February 13, 2001.

II.

"[C]ourts of appeals . . . have jurisdiction of appeals from all final decisions of the district courts of the United States." 28 U.S.C. 1291. Marcelus concedes that "in most circumstances" where the district court has ruled to transfer venue within the federal system, such a decision and order is not considered to be collaterally final for appellate purposes. In fact,

For many years, this court and virtually every other court has held that such orders transferring venue are not appealable [W]here the district court is essentially ruling on a motion to transfer venue within the federal system . . . 'in the interests of justice' . . . the order issued by the district court is not a collaterally final order.

Nascone v. Spudnuts Inc., 735 F.2d 763, 764 (3d Cir. 1984) (citations omitted).

As a result, we hold that we lack jurisdiction to consider the January 19, 2001 Order transferring venue from the New Jersey District Court to the United States Court of Appeals for the Fifth Circuit.

III.

For the foregoing reasons, we will dismiss this appeal for lack of jurisdiction.

TO THE CLERK:

Please file the foregoing opinion.

/s/ Anthony J. Scirica
Circuit Judge

UNITED STATES COURT OF APPEALS
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JUDGMENT

This cause came to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel on July 11, 2002. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the appeal of the judgment of the District Court entered January 24, 2001, be, and the same is hereby dismissed for lack of jurisdiction. No costs taxed. All of the above in accordance with the opinion of this Court.

ATTEST:

Acting Clerk

DATED: 25 September 2002

September 25, 2002

TO: Marcia M. Waldron, Clerk
FROM: Judge Scirica
RE: Marcelus v. Jordan, et al.
No. 01-1780
Argued: July 11, 2002

Dear Marcy:

Please file the attached not precedential opinion which has been cleared in accordance with our procedure. The signed original is being delivered to your office.

Sincerely,

Anthony J. Scirica

AJS:sss

cc (letter only): Judge Greenberg
Judge Fulla